

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

BYTEMARK, INC.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Civil Action No. 2:16-cv-00543-JRG/RSP
	§	
MASABI LTD.,	§	JURY TRIAL DEMANDED
	§	
Defendant.	§	

**DEFENDANT’S OPPOSED MOTION TO WITHDRAW DEFENDANT MASABI LTD.’S
MOTION FOR RULE 11 SANCTIONS AGAINST PLAINTIFF BYTEMARK, INC.**

Defendant, Masabi Ltd. (“Masabi”) hereby moves to withdraw its Motion for Rule 11 Sanctions (Dkt. No. 83).

In response to Masabi’s Motion for Rule 11 Sanctions against Plaintiff Bytemark, Inc., Plaintiff now has made several new disclosures, stated new infringement theories, and has for the first time made significant modifications to their 2016 defective infringement contentions. For example, Plaintiff now, for the first time, has removed from its claim infringement contention charts the 106 instances of “Information and Belief” that formed the basis of Plaintiff’s allegations that the accused Masabi software infringed the asserted patents. Instead, Plaintiff has now replaced some of those statements with citations to portions of the accused computer code. In addition, Plaintiff’s new infringement contentions present a new theory of patent infringement. Had Plaintiff actually conducted an adequate pre-suit investigation, Masabi would not now be learning of this new theory of infringement just four (4) months before trial. Thus, Masabi has suffered undue prejudice as result of Plaintiff’s pivot in its legal position and assertion of its new theory of patent infringement.

Masabi is in the process of evaluating, inter alia, the adequacy of these recent disclosures to determine to what degree they may have addressed the issues raised in its Rule 11 motion. In light of these recent disclosures, Defendant finds it prudent to withdraw its Motion for Rule 11 Sanctions pending further review of Plaintiff's papers to address the numerous defects set forth in the Rule 11 motion.

Wherefore, Masabi Ltd. respectfully requests that the Court grant this Motion.

Dated: August 1, 2017

Respectfully submitted,

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Attorneys for Defendant Masabi Ltd.

CERTIFICATE OF CONFERENCE

In compliance with E.D. Tex. Loc. Ct. R. CV-7(h), the undersigned counsel for Defendant Masabi, Ltd. communicated by telephone with Andy Tindel, counsel for Plaintiff Bytemark, Inc., on July 31, 2017 with respect to Defendant's Motion to Withdraw its Motion for Rule 11 Sanctions. The parties could not reach agreement on the Motion and discussions have conclusively ended in an impasse, leaving an open issue for the Court to resolve. Accordingly, Defendant's Motion to Withdraw its Motion for Rule 11 Sanctions is submitted as an opposed motion.

/s/ Katarzyna Brozynski
Katarzyna Brozynski

CERTIFICATE OF SERVICE

This is to certify that all known counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per E. Dist. Tex. Loc. Ct. R. CV-5(a)(3) on this the 1st day of August 2017. Any other known counsel of record will be served with a copy of this document by email and/or facsimile transmission.

By: /s/ Katarzyna Brozynski
Katarzyna Brozynski